IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 19TH JUNE 2007 / 29TH JYAISHTA 1929

OP.No. 17903 of 2000(F)
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PETITIONER:
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JAYAKUMARAN THAMPI, KOTTAPOLIKARA HOUSE,
MUNDAIKONAM, MUTTADA, THIRUVANANTHAPURAM.

BY ADV. SRI.B.HARISH KUMAR

RESPONDENTS:
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1. UNION OF INDIA, REPRESENTED BY THE
UNDER SECRETARY TO GOVERNMENT,
MINISTRY OF DEFENCE, NEW DELHI.

2. THE UNDER SECRETARY TO GOVERNMENT,
MINISTRY OF DEFENCE, GOVERNMENT OF INDIA,
NEW DELHI.

3. THE RECORD OFFICER, TOPKHANA ABHILEKH,
ARTILLERY RECORDS, NASIK ROAD CAMP.

BY SRI. AJITH KRISHNAN, ADDL.CGSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 19/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

## APPENDIX

**PETIITONER'S EXHIBITS**:

EXT.P1: TRUE COPY OF THE CERTIFICATE OF SERVICE OF THE PETITIONER DATED 20.1.1981.

EXT.P2: TRUE COPY OF THE COMMUNICATION ISSUED TO THE PETITIONER FROM THE OFFICE OF THE THIRD RESPONDENT DATED 20.2.1981.

EXT.P3: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER BEFORE THE FIRST RESPONDENT DATED 1.2.1998.

EXT.P4: TRUE COPY OF THE RODER OF THE SECOND RESPONDENT DATED 28.10.1999.

EXT.P5: A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 25.12.1997 ISSUED TO THE PETITIONER.

EXT.P6: A TRUE COPY OF THE MEDICAL REPORT OF THE INJURY SUSTAINED TO THE PETITIONER DURING THE SERVICE PERIOD.

EXT.P7: A TRUE COPY OF THE MEDICAL CERTIFICATE DATED 9.5.06 ISSUED TO THE PETITIONER.

**RESPONDENT'S EXHIBITS**:

EXT.R1(a): TRUE COPY OF THE LETTER DATED 9.7.1981 SUBMITTED BY THE PETITIONER TO THE ASSISTANT RECORD OFFICER, MAHARASHTRA.

EXT.R1(b): TRUE COPY OF THE MEDICAL BOARD PROCEEDINGS OF THE AFMSF -16.

EXT.R1(c): TRUE COPY OF THE OFFICE LETTER NO.G-3/81/1647/II DATED 13.4.1981.

EXT.R1(d): TRUE LCOPY OF the LETTER NO.14327497/DP-19852/NE DATED 1.5.1981.

EXT.R1(e): AN EXTRACT OF AMENDMENT IN RULE 17 ON 27(C) OF THE ENTITLEMNT RULES.

EXT.R1(f): EXTRACT OF PENSION REGULATION FOR ARMY ACT 1961.

EXT.R1(g): EXTRACT OF PARA 8 OF ENTITLEMENT RULES FOR CASUALTY PENSIONARY AWARDS 1982.

/TRUE COPY/

**THOTTATHIL B.RADHAKRISHNAN, J.**

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O.P.No.17903 OF 2000

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Dated this the 19th day of June, 2007

**JUDGMENT**

The petitioner was recruited to the Indian Army on 5.11.1976 in the Artillery Wing at the age of 22 years. He was admitted on 27.9.1977, going by Ext.P6, for management of an injury to his knee. A reading of Ext.P6 as such does not show that the injury sustained by him was such that it could, by itself, result in any situation warranting his being boarded out from the Army. I say so because, though it is a matter of medical expertise, Ext.P6 ends by recommending light duty work for one month. I may notice that this document surfaces only along with reply affidavit, though I am not inclined to brush aside its credibility. It appears that in 1981, for the reasons stated in Ext.R1(b), he was boarded out on ground that he had reached the state of Neurosis (300-d). Ext.R1(a) evidences that on 9.6.1981, the petitioner wrote to the Assistant Record Officer, Artillery Records, Nasik Road Camp that he is satisfied with the decision of the competent authority and has no objection about

it. He, accordingly, requested for sanctioning invaliding gratuity, which he was granted as per Ext.R1(d). He admittedly received such amount some time in 1981.

2. Long thereafter, he moved this Court after making a representation on 1.2.1988 stating that he is entitled to disability pension. This Court directed that representation to be considered. This resulted in Ext.P4 order, by which, the competent authority found no ground to interfere with the earlier decision.

3. The petitioner moved this Court on the strength of documents, on the basis of which, he contented that he apparently did not have any idea about the ground on which had had been denied disability pension. Along with reply affidavit, he has now placed Ext.P5, which would show that at least in 1997, even in his home district he was under treatment after being boarded out of the Army. He was then under the treatment of psychiatrist for anxiety. Ext.P7 would show that

even on 9.5.2006, he was under the treatment of an Ayurvedic physician.

4. In so far as the petitioner has been boarded out on the ground of Neurosis (300-d) and because it is stated in Ext.R1(b) that it is not attributable to any constitutional defect, learned counsel for the petitioner relied on the decision of the Full Bench of this Court in **Baby** v. **Union of India** [2003 (3) KLT 362] to contend that on being recruited after a medical test, it has to be assumed that the petitioner has no traceable constitutional defect and if the reason for boarding out has to be attributed to a constitutional defect and not to a ground referable to Army service, specific reasons of the Medical Board has to be stated. In so far as the enormous delay in moving this Court in the earlier round, which resulted in the direction for disposal of his representation is concerned, learned counsel for the petitioner relied on the decision of this Court in **Mathew** v. **Union of India** [2000 (3) KLT 827].

5. Dealing with the question as to whether the claim of the petitioner as being raised after belated period of time, it can be easily understood with reference to Exts.R1(a) and R1(d) that even as early as in 1981, the petitioner was aware of the fact that he was being given only an amount of Rs.1,413/- as invaliding gratuity, thereby refusing him the relief of disability pension. **Mathew**'s case (supra) is one which dealt with a delay of a period of 1 ½ or 2 years. As already noticed, the document Ext.P6 relating to the treatment given for his injury to the knee does not apparently show that he had undergone any procedure which would have been necessary for management of a serious issue. It also does not show that the situation that resulted out of that injury could have caused the emotional status which the department says is Neurosis (300-d). Way back in 1981, the department had concluded, on the basis of the advice of the Medical Board, that the petitioner suffered from Neurosis (300-d) and he could not be granted disability pension on the ground of Neurosis (300-d), a constitutional disorder, not referable to Army service. Under such circumstances, the

statement in Ext.R1(b) that the reason is attributable to a constitutional defect is not liable to be reopened at this distance of time.

In the result, the writ petition fails. The same is dismissed accordingly. No costs.

Sd/-

**THOTTATHIL B.RADHAKRISHNAN**
**Judge**

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.17903 OF 2000

JUDGMENT

19TH JUNE, 2007.

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